IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 370 OF 1991

Maharashtra State Road Transport
Corporation. ... Appellants.

Versus.

1. Smt.Najubai Shivaji Nikam.
2. Anna Shivaji Nikam.
3. Bhausaheb Shivaji Nikam.
4. Kum.Bharati Shivaji Nikam.
5. Ashok Dadaji Borse.
6. New India Assurance Co. Nashik.
7. Bhavrao K.Pawar. ... Respondents.

Shri G.S.Hegde for the Appellants.

Shri P.N.Karlekar for Respondents Nos.1 to 4.

ALONG WITH

FIRST APPEAL NO. 371 OF 1991

Maharashtra State Road Transport
Corporation. ... Appellants.

Versus.

1. Smt.Tejabai Karbhari Hire,
2. Kiran Karbhari Hire.
3. Smita Karbhari Hire.
4. Urmila Karbhari Hire.
5. Lalita Karbhari Hire.
6. Ashok Dadaji Barse.
7. New India Assurance Co. Nashik. ... Respondents.

Shri G.S.Hegde for the Appellants.

Shri P.N.Karlekar for the Respondents Nos.1 to 5.

CORAM : ABHAY S.OKA, J.

DATED : 9th March, 2006.

ORAL JUDGMENT.

1. I have heard the submissions of the learned Advocates appearing for the parties on 6th March 2006 and today the Appeals are kept for dictation of judgment. As both the Appeals relate to separate claims for compensation arising out of the same accident, the Appeals can be conveniently disposed of by a common Judgment.

2. In First Appeal No.370 of 1991, the Respondents Nos.1 to 4 are the original Claimants. They are the legal representatives of deceased Shivaji Nikam. In so far as First Appeal No.371 of 1991 is concerned, Respondents Nos.1 to 5 are the original Claimants who are the legal representatives of the deceased Karbhari Hire. The Appellants Maharashtra State Road Transport Corporation is the owner of the Bus involved in the accident. On 5th October 1984 both the deceased were travelling by a motor cycle. There was a head-on collision between the motor cycle and the bus of the Appellant-Corporation. The deceased were proceeding towards Deola and the S.T. bus was coming from opposite

direction. The deceased persons suffered serious injuries and immediately succumbed to their injuries. In both the cases claim petitions were filed by the widow and children of the deceased. By a common judgment both the claim petitions were partly allowed. The Tribunal awarded compensation of Rs.89,000/- to the legal representatives of Karbhari Hire and a compensation of Rs.85,000/- to the legal representatives of Shivaji Nikam.

3. Shri Hegde appearing for the Appellants in both the Appeals submitted that the accident took place only due to the negligence on the part of the driver of the motor cycle. He submitted that at the spot of the accident there is a curve and the road is very narrow. He pointed out that the width of pacca road is such that only one vehicle can pass at a time. He submitted that the evidence on record shows that the S.T. Bus was being driven on its correct side. There was a matador vehicle coming from the opposite side. The person plying the motor cycle was trying to overtake the Matador vehicle and in the process of overtaking the Matador, the motor cycle dashed against the driver's side of the ST Bus. He therefore submitted that the driver of the S.T.Bus was not negligent. He submitted that so far as deceased Karbhari Hire is concerned, his

basic pay was Rs.335/- and therefore, the learned Judge committed serious error by taking his yearly income at Rs.9600/-. He pointed out that the multiplier of 13 could not have been applied. He, therefore, submitted that even assuming that the driver of the bus was negligent, the compensation awarded is on the higher side. He submitted that so far as the deceased Shivaji Nikam is concerned, he was an agriculturist and even after his demise the agricultural land was available to the members of the family and therefore, the Applicants are not entitled to compensation as there was no loss of income.

4. Shri Karlekar appearing for the original Claimants supported the impugned Judgments and Awards and pointed out that the findings recorded by the Tribunal were justified considering the oral and documentary evidence on record.

5. I have considered the submissions. The Claimants examined one Murlidhar Aher at Exh.63. He is holding agricultural land in the outskirt of village Nivane. He was walking on the road in the direction of Kalwan when the accident took place. He stated that there was a curve of "L" shape at the site of the accident. He stated that he saw the motor cycle on the

road. He stated that the S.T.Bus was coming from the side of Deola in a very fast speed. He stated that the bus was ahead of him and thereafter he heard the noise of impact. He stated that he rushed to the spot which was at a distance of 250 feet. He stated that after the impact the motor cycle was dragged 15 to 20 feet and it was under the front side of the S.T.Bus. In his cross-examination he has denied the correctness of the suggestion that the Bus was being driven at a moderate speed. The bus driver was examined by the Appellants. In his examination-in-chief, the bus driver stated that at the place at which the accident took place there was a curve and on both sides of the road there were katchha strips having width of 3 feet. He stated that it is a single track road and only one vehicle can pass at a time. He stated that a Matador came from opposite direction and it passed by the side of the S.T.Bus. The version of the driver seems to be that the driver of the motor cycle was negligent. The driver of the motor cycle wanted to overtake the Matador vehicle and in that process it dashed against the front portion of the S.T.bus.

6. The spot panchanama has been exhibited at Exh.65. The spot panchanama does disclose that the width of the road at the spot of the accident is 14 feet

and on one side there is katcha strip of 5 feet and on the other side there is katcha strip of 7 feet. Thus the total width of the road is 26 feet. There is no reason to disbelieve what is stated in the spot panchanama especially when the panchanama has been admitted in evidence by consent of the parties. The panch witness Namdeo Aher has also corroborated what is mentioned in the panchanama. The contention of the driver was that at the spot of the accident, the width of the road is 10 feet when the total width of the road at the spot as evidenced from the spot panchanama is 26 feet including the width of the katcha strips on both sides. The attempt of the driver of the S.T.Bus was to come out with a case that the road was a single track road and therefore, only one vehicle can pass through at a time. The oral testimony of the driver appears to be totally contrary to what is recorded in the spot panchanama. The brake marks noted in the spot panchanama show that the motor cycle was dragged upto a distance of 14 feet after the impact. However, the driver has stated that the S.T. bus stopped at a distance of 5 feet from the spot of the impact. It appears that the S.T. Bus had just negotiated the curve and therefore there is every possibility that it must have come to some extent on its wrong side on the road. Considering what is stated in the panchanama, the

evidence of the driver of the bus does not inspire confidence. On the one hand the S.T.Driver wants the Court to believe that only one vehicle can pass at a time and on the other hand he has stated that the matador came from opposite direction and passed by the side of the bus. The driver himself has stated in his cross-examination that the speed of the bus was 40 km per hour. It must be noted here that at such speed, the S.T. bus had negotiated a very sharp curve. These factors are considered by the Tribunal while recording the finding that the accident occurred due to the negligence on the part of the driver of the S.T.Bus. I find no reason to interfere with the said finding recorded by the Tribunal.

7. Shri Hegde has tried to argue that even the deceased was plying the motor cycle at a high speed which contributed to the said accident. Except for the version of the driver, no one has been examined by the Appellant to show that the motor cycle was being driven in a very high speed. I have already held that the version of the driver does not inspire confidence. Hence the contention of contributory negligence cannot be accepted.

8. Now it will be necessary to refer to the quantum

of the compensation awarded. The learned Judge has referred to the basic salary of the deceased Karbhari which was Rs.335/- p.m. After considering the basic salary, as also the D.A. and other allowances payable, the learned Judge has taken the income as Rs.1000/-per month. From the service book of the deceased which was produced on record, it appears that his age at the time of death was 37 years. It appears that he was a permanent employee of the Zilla Parishad. It must be noted here that while calculating the multiplicand, the learned Member of the Tribunal has not considered the future prospects of increase in the salary. When the deceased had a stable job in Zilla Parishad, the prospects of increase in the income/salary ought to have been considered. The learned Judge deducted a sum of Rs.200/- per month after taking the gross emolument of the deceased at Rs.1000/- per month. The multiplier of 13 has been applied by the learned Member of the Tribunal considering the age of the deceased was 37 years. After applying the said multiplier the learned Member deducted a sum of Rs.20,800/- on account of lumpsum payment and uncertainty of human life. Such a deduction was not at all permissible in view of the law laid down by the Apex Court in a decision reported in 1994 (2) SCC page 176 (General Manager, KSRTC v/s.Susamma Thomas). Moreover the learned Member of the

Tribunal has not awarded usual amount of Rs.15,000/- by way of loss of consortium. Thus the compensation awarded is on the lower side and in fact the Claimants were entitled to more amount. However there is no cross appeal or cross objection filed by the Claimants.

9. The same is the case with Shivaji Nikam. Considering the income received by him, the learned Judge applied multiplier of 11 and made deduction of Rs.21,000/- on account of lumpsum payment. The usual amount of Rs.15,000/- is not awarded in this case also.

10. Thus taking an overall view of the matter, no fault can be found with the impugned Judgments and Awards. Shri Hegde made a grievance regarding interest at the rate of 12% per annum awarded by the Tribunal as in the recent past interest rates have gone down. In this case the original claim petition is of 1985. Only because the Appeals remained pending for such a long time, the Appellants cannot make a grievance regarding rate of interest awarded. Moreover, the quantum of compensation awarded in both claims is on the lower side. It will not be out of place to refer the decision of the Apex Court reported in (2005) 12 SCC page 190 (Kanhaiyal Kataria and others v/s. Mukul Chaturvedi and others). In the said decision the Apex Court has

awarded interest at the rate of 12% per annum in a fatal accident case. Hence there is no merit in the grievance regarding the rate of interest.

11. The Appeals are dismissed with no order as to costs.

Judge.